

46 Am. Jur. 2d Judges § 10

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Judges

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II. Qualification and Selection

§ 10. Oath of judge; bond

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  3, 4, 5

Forms

Forms relating to oath or bond, generally, see Am. Jur. Legal Forms 2d, Judges [\[Westlaw®\(r\) Search Query\]](#)

Before entering on the duties of the position, an appointed or elected judge is usually required to take an oath of office,¹ and this requirement generally applies to special judges.² A special oath is prescribed for federal judges,³ and the judges of state courts are required by federal statute to take an oath to support the Constitution of the United States.⁴ While members of a state supreme court take an oath to uphold the United States Constitution, the members also take an oath to uphold the state constitution, which is the enduring expression of the will of "we, the people" of the state.⁵

A failure to file an oath of office does not necessarily, by itself, deprive a judge of the authority to act.⁶ Similarly, the failure to post a bond does not necessarily provide a basis for forfeiture of office.⁷ On the other hand, a nominee's unilateral act of reciting the oath of office for associate justice before persons qualified to administer oaths did not transform the situation and somehow create a valid appointment where there was none; the Governor made no appointment, thus, no valid commission could issue, and the purported taking of the oath was an empty gesture.⁸

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Footnotes

1 City of Crossett v. Switzer, 302 Ark. 239, 788 S.W.2d 738 (1990); Adams v. State, 214 Ind. 603, 17 N.E.2d
2 84, 118 A.L.R. 1095 (1938).
3 § 235.
4 Am. Jur. 2d, Federal Courts § 25.
5 4 U.S.C.A. §§ 101, 102.
6 People v. Tanner, 496 Mich. 199, 853 N.W.2d 653 (2014).
7 Espinosa v. State, 115 S.W.3d 64 (Tex. App. San Antonio 2003).
8 Vos v. Village of Washingtonville, 2004-Ohio-1388, 2004 WL 549818 (Ohio Ct. App. 7th Dist. Columbiana
County 2004).
McCarthy v. Governor, 471 Mass. 1008, 27 N.E.3d 828 (2015).

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